

APPEAL NO. 041250
FILED JULY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 6, 2003, and continuing on April 21, 2004, with the record closing on the latter date. The hearing officer determined that the claimant is not entitled to supplemental income benefits (SIBs) for the second quarter, November 26, 2002, to February 24, 2003, or the third quarter, February 25 to May 26, 2003. The claimant has appealed and urges that the decision should be reversed on factual sufficiency grounds. The respondent (self-insured) has responded and urges affirmance.

DECISION

Affirmed.

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and the order of the hearing officer.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion at issue is whether, during the qualifying periods for the second and third quarters, the claimant made a good faith effort to obtain employment commensurate with his ability to work. The claimant asserted that he had no ability to work due to his compensable injury. The hearing officer found that the claimant did not meet the requirements of Rule 130.102(d)(4), he had an ability to perform some work, he didn't seek employment during every week of the qualifying periods for the second and third quarters, was not enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or a private provider, and that other records showed that the claimant was able to return to work during the qualifying periods for the second and third quarters. Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence presented at the CCH (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge